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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

FEDERAL TRADE COMMISSION,  
STATE OF NEW JERSEY, and  
STATE OF MICHIGAN,  
Plaintiffs,  
-against-

: Hon.  
:  
: Civil Action No. 96-3228  
: (CJCL)

SPARTA CHEM, INC.,  
669 River Drive, Center #2  
Elmwood, New Jersey 07407  
a corporation,  
-and-

:  
:  
: \_\_\_\_\_  
: COMPLAINT FOR  
: INJUNCTIVE AND OTHER RELIEF  
: \_\_\_\_\_

DENNIS J. SACCURATO  
669 River Drive, Center #2  
Elmwood, New Jersey 07407  
individually and as an officer  
or manager of the corporation,  
also d/b/a SPARTA CHEM, INC.  
and COMPU-KLEEN, INC.,  
Defendants.

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Plaintiffs, the Federal Trade Commission ("FTC" or "Commission") and the States of New Jersey and Michigan, through their undersigned attorneys, for their Complaint allege:

1. Plaintiff FTC brings this action under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and under the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101 et seq., to secure a permanent injunction, preliminary injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for Defendants' violations of the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310 ("Telemarketing Rule" or "Rule"), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in connection with the sale of nondurable cleaning and other supplies.

Plaintiffs States of New Jersey and Michigan bring this action under Section 4 of the Telemarketing Act, 15 U.S.C. § 6103, to secure similar injunctive and equitable relief.

2. Plaintiff State of New Jersey, through its Attorney General and its authorized state agent, John E. Wassberg, Director of the Bergen County Office of Consumer Protection, as part of the same case or controversy, also brings a supplemental action pursuant to the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, et seq. ("CFA").

#### JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), 6103(a), 6103(e), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a), 1345 and 1367.

4. Venue in this District is proper under 15 U.S.C. §§ 53(b) and 6103(e) and 28 U.S.C. §§ 1391(b) and (c).

THE PARTIES

5. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the Telemarketing Rule, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing practices. The Commission may initiate federal district court proceedings to enjoin violations of the FTC Act and the Telemarketing Rule and to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b and 6105(b).

6. Plaintiff, the State of New Jersey, as parens patriae, is authorized by 15 U.S.C. § 6103(a) to file federal district court actions to enjoin violations of the Telemarketing Rule and to secure such relief as may be appropriate in each case, including damages, restitution, or other compensation, on behalf of the residents of the State of New Jersey, or to obtain such further and other relief as the Court may deem appropriate.

7. Plaintiff, the State of Michigan, as parens patriae, is authorized by 15 U.S.C. § 6103(a) to file federal district court actions to enjoin violations of the Telemarketing Rule and to secure such relief as may be appropriate in each case, including

damages, restitution, or other compensation, on behalf of the residents of the State of Michigan, or to obtain such further and other relief as the Court may deem appropriate.

8. Defendant Sparta Chem, Inc. was incorporated in the State of New Jersey on October 17, 1987, and has maintained its office and principal place of business within the District of New Jersey at 669 River Drive, Center #2, Elmwood Park, New Jersey 07407. Defendant Sparta Chem, Inc. resided or transacted business in the District of New Jersey. On or about April 6, 1995, the New Jersey Secretary of State revoked the certificate of incorporation of Defendant Sparta Chem, Inc.

9. Defendant Dennis J. Saccurato is the President and General Manager of Sparta Chem, Inc. and its sole shareholder. Since the New Jersey Secretary of State revoked the certificate of incorporation of Sparta Chem, Inc. in April 1995, he has done business as Sparta Chem, Inc. At all times pertinent to this Complaint he has also done business as Compu-Kleen, Inc. He resides at 63 Somertown Road, Ossining, New York 10562. His business address is 669 River Drive, Center #2, Elmwood, New Jersey 07407. Dennis J. Saccurato transacts or has transacted business in the District of New Jersey.

10. Individually or in concert with others, Defendant Saccurato has formulated, directed, controlled or participated in the acts and practices of the corporate Defendant, including the various acts and practices set forth herein.

11. At all times material hereto, Defendants have been engaged in the business of offering for sale and selling, through numerous sales representatives, cleaning supplies and other merchandise, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' COURSE OF BUSINESS

12. Since about October 1987 and continuing thereafter, in connection with the sale or offering for sale of nondurable cleaning supplies and other merchandise, Defendants have engaged in a plan, program or campaign to sell concrete cleaner, sweeping compound, spill absorbent, de-icer, soap, pressurized duster, lint-free wipes, concrete cure, and saw blades through interstate telephone calls.

13. Defendants frequently ship unordered supplies or other merchandise to businesses with an invoice that includes the name of an employee of the business. Many recipients pay these invoices in the mistaken belief that the employee named on the invoice ordered the supplies.

14. In numerous other instances, Defendants contact businesses by telephone and speak with an individual in the business, usually the foreman on a construction site or the person in charge of maintenance, and obtain, by pretense, the individual's correct name or other information, such as the name of the person authorized by the business to order merchandise, for use in preparing a false invoice. In some cases, Defendants pretend to be the business's regular or previous supplier.

15. After contacting the business by telephone, Defendants often make a "verification call" to the business, in which they confirm that their representative had earlier contacted the business and arranged to send a gift, premium or promotional material to the business; that the business agreed to receive small amounts or trial samples of merchandise; that the business ordered one or more units of product at the unit price previously quoted; or, in cases in which Defendants misled the business to believe that Defendants are a regular or previous supplier, that the business desires to "re-order" a fictional earlier order.

16. Defendants subsequently send shipments of cleaning or other supplies to businesses with invoices for this merchandise. When the business has agreed to receive some merchandise, e.g., a trial sample, Defendants send more and different merchandise than agreed upon. When the business has agreed to buy one or more units of merchandise at a quoted price, the invoice quotes this price for smaller units or for units smaller than are customary between businesses, e.g., gallons instead of barrels. When Defendants have misled the business into believing that Defendants are a regular or previous supplier, they send merchandise purported to be a re-order of an earlier order.

17. Defendants' products frequently are priced substantially higher than prices the businesses pay for similar products from their regular suppliers. Defendants also frequently add a substantial charge for shipping and handling to the invoiced price of their products.

18. In numerous instances, where a recipient disputes the fact of having ordered, the amount, or the price of merchandise received, Defendants falsely claim that the recipient ordered the merchandise and that the order was verified. Defendants attempt to obtain payment by using threats or intimidation; for example, they threaten to refer the matter to a collection agency, to ruin the recipient's credit, and/or to sue the recipient. In numerous instances, Defendants refuse to cancel the order or accept the return of the merchandise unless the recipient pays a substantial "restocking fee" as well as return shipping costs.

VIOLATIONS OF SECTION 5(a) OF FTC ACT

19. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that "unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful."

COUNT ONE

**DECEPTIVE ACTS OR PRACTICES  
IN VIOLATION OF SECTION 5(a) OF THE FTC ACT**

20. In numerous instances, in connection with the sale, offering for sale or distribution of cleaning supplies or other merchandise, Defendants have represented, directly or by implication, through telephone calls, letters, invoices, packing slips, shipper records and/or shipments of merchandise that:

- (a) Defendants had previously sold merchandise to the business. In truth and in fact, Defendants had not previously sold merchandise to the business.
- (b) Defendants are asking for information (such as the name of the person responsible for ordering merchandise) to

follow up on a previous visit or telephone call to the business or to send a free gift, free sample, or promotional materials to the business. In truth and in fact, Defendants are not asking for information to follow up on a previous telephone call or visit to the business or to send a free gift, sample, or promotional materials; rather, Defendants are asking for such information so that Defendants can (1) ship merchandise to the business without the business's prior expressed consent, (2) include the information on a billing invoice sent to the business, or (3) mislead employees of the business into believing that Defendants are a regular supplier of the business.

- (c) the business ordered the merchandise that was shipped and/or billed to it by Defendants. In truth and in fact, the business did not order the merchandise shipped and/or billed for by Defendants.
- (d) Defendants are offering merchandise at the price ordinarily paid by the business or at a reduced price. In truth and in fact, Defendants are not offering the merchandise at the price ordinarily paid by the business or at a reduced price; rather, Defendants bill the merchandise at a price that is many times higher than the business ordinarily pays for such merchandise.
- (e) Defendants have verified the order by making a follow-up call to the business. In truth and in fact,



Defendants have not verified the business's order in a follow-up telephone call to the customer; rather, the merchandise was not ordered and Defendants' verification, if any, merely confirms that the business agreed to accept a gift, sample, catalog or other promotional materials, or agreed to accept shipment based on Defendants' misrepresentations.

- (f) the business has an obligation to pay a restocking fee or shipping costs before returning merchandise received from Defendants. In truth and in fact, the business has no obligation to pay a restocking fee or shipping costs to return merchandise received from Defendants; rather, the business did not order the merchandise and therefore has no obligation to pay a restocking fee or shipping costs to return the merchandise.
- (g) Defendants are selling a certain quantity or size of merchandise. In truth and in fact, Defendants do not sell the represented quantity or size of merchandise; rather, Defendants, without the business's prior expressed consent, ship to the business increased quantities or sizes of merchandise.
- (h) the business has agreed to pay a certain price for merchandise shipped by Defendants. In truth and in fact, the business has not agreed to pay a certain price for the merchandise shipped by Defendants; rather, the business did not order the merchandise.

21. Therefore, the representations set forth in Paragraph 20 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE FTC TELEMARKETING RULE

22. In the Telemarketing Act, 15 U.S.C. § 6101 et seq., Congress directed the FTC to prescribe rules prohibiting deceptive and abusive telemarketing acts or practices. On August 16, 1995, the FTC promulgated the Telemarketing Rule, 16 C.F.R. Part 310, with a Statement of Basis and Purpose, 60 Fed. Reg. 43842 (August 23, 1995). The Rule became effective December 31, 1995, and since then has remained in full force and effect. On March 11, 1996, Defendants received a copy of the Rule from the FTC.

23. Telephone calls between a telemarketer and a business that involve the retail sale of nondurable office or cleaning supplies are subject to the Telemarketing Rule's prohibitions against deceptive and abusive telemarketing acts or practices. 16 C.F.R. § 310.6(g). In its Statement of Basis and Purpose for the Telemarketing Rule, the FTC stated that

the Commission's enforcement experience against deceptive telemarketers indicates that office and cleaning supplies have been by far the most significant business-to-business problem area: such telemarketing falls within the Commission's definition of deceptive telemarketing acts or practices.

60 Fed. Reg. 43842, 43861 (Aug. 23, 1995).

24. The Telemarketing Rule (1) requires sellers and telemarketers to make disclosures regarding the goods or services

that are the subject of a sales offer; (2) prohibits telemarketers from misrepresenting material information regarding the goods or services that are the subject of a sales offer; and (3) prohibits telemarketers and sellers from making a false or misleading statement to induce any person to pay for goods or services. See 16 C.F.R. § 310.3. The Rule also prohibits any seller or telemarketer from engaging in certain abusive acts or practices. See 16 C.F.R. § 310.4.

25. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the Telemarketing Rule constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 5(a).

#### VIOLATIONS OF THE RULE

26. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as those terms are defined in the Telemarketing Rule, 16 C.F.R. § 310.2(r), (t) and (u).

#### COUNT TWO

##### MISREPRESENTATIONS ABOUT GOODS

27. In numerous instances, in connection with the telemarketing of nondurable cleaning supplies, Defendants have misrepresented, directly or by implication:

- (a) the total costs to purchase, receive or use the offered goods, including, but not limited to, misrepresenting the cost for a particular quantity of supplies, and that the shipment cost will be the reasonable cost for

ground shipment of such supplies, thereby violating 16 C.F.R. § 310.3(a)(2)(i);

(b) the quantity of the offered goods, including, but not limited to, misrepresenting that the Defendants are shipping a particular quantity of goods, thereby violating 16 C.F.R. § 310.3(a)(2)(ii);

(c) material aspects of the performance, efficacy, nature or central characteristics of the offered goods, including, but not limited to, misrepresenting that the supplies are the same supplies previously ordered and used by the business, thereby violating 16 C.F.R. § 310.3(a)(2)(iii).

### COUNT THREE

#### **FALSE AND MISLEADING STATEMENTS TO INDUCE PAYMENT**

28. In numerous instances, in connection with the telemarketing of nondurable cleaning supplies, Defendants have made false or misleading statements to induce the business to pay for the supplies, thereby violating 16 C.F.R. § 310.3(a)(4), including, but not limited to, misrepresenting, directly or by implication, that:

(a) Defendants had previously sold supplies to the business;

(b) the business has an obligation to pay a restocking fee or shipping costs before returning supplies received from Defendants;

- (c) the business ordered the supplies that were shipped and/or billed to it by Defendants;
- (d) the business agreed to pay a certain price for supplies shipped by Defendants; or
- (e) Defendants have verified the order by making a follow-up call to the business.

COUNT FOUR

USE OF THREATS OR INTIMIDATION

29. In numerous instances, in connection with the telemarketing of nondurable cleaning supplies, Defendants have used threats or intimidation, including, but not limited to, unfounded threats to refer the matter to a collection agency, to damage the business's credit, or to sue the business, thereby violating 16 C.F.R. § 310.4(a)(1).

VIOLATIONS OF THE NEW JERSEY  
CONSUMER FRAUD ACT

30. Pursuant to N.J.S.A. 56:8-2 of the CFA, it is unlawful for any person to engage in the act, use or employment of any unconscionable commercial practice, deception, fraud, false pretense, false promise, or misrepresentation in connection with the advertisement or sale of any merchandise or the subsequent performance by any person, whether or not any person has in fact been misled, deceived or damaged as a result.

31. Pursuant to N.J.S.A. 56:8-8, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-13, the Attorney General is authorized to institute civil actions to prosecute violations of the CFA and to obtain injunctive and ancillary relief, civil monetary penalties, costs

of investigation and prosecution, and restoration of all money or property acquired in violation of the CFA. Pursuant to N.J.S.A. 56:8-14.1, the director of a certified county office of consumer affairs has been given comparable authority.

32. Defendants are "persons" engaged in the "advertisement" or "sale" of "merchandise" as those terms are defined in N.J.S.A. 56:8-1 of the CFA.

COUNT FIVE

33. Each of Defendants' acts causing or inducing consumers to pay for unordered merchandise, and Defendants' retention and conversion to their own uses of the business's monies so obtained, including but not limited to the following:

- (a) eliciting and verifying information for purposes of completing false invoices;
- (b) misleading businesses with respect to merchandise or quantities or prices of merchandise being offered;
- (c) shipping unordered merchandise or more or different merchandise than was ordered;
- (d) shipping merchandise under pretense that the merchandise is a "re-order" of a fictional previous order;
- (e) billing for unordered merchandise or for more merchandise than was ordered or for merchandise at greater cost than was represented;

- (f) attempting to impose "restocking" or shipping costs on businesses wishing to return unordered merchandise;
- (g) failing to identify unordered merchandise as a gift, free sample, or the like that the business might use or dispose of without obligation to Defendants of any kind; or
- (h) attempting to collect for, or to intimidate or bully businesses to pay for, unordered merchandise;

constitutes the act, use or employment of unconscionable commercial practices, fraud, deception, false pretenses, false promises and/or misrepresentation, in violation of N.J.S.A. 56:8-2 of the CFA.

#### INJURY

34. Businesses in many areas of the United States, including the States of New Jersey and Michigan, have suffered substantial monetary loss as a result of Defendants' unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure businesses and to harm the public interest.

#### THIS COURT'S POWER TO GRANT RELIEF

35. Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), empower this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and

redress violations of the FTC Act and the Telemarketing Rule. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by Defendants' law violations.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that this Court, as authorized by Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Sections 4 and 6(b) of the Telemarketing Act, 15 U.S.C. §§ 6103 and 6105(b), and pursuant to its own equitable powers:

(1) Enjoin Defendants permanently, preliminarily, and temporarily from violating the Telemarketing Rule, Section 5(a) of the FTC Act, and N.J.S.A. 56:8-2 of the CFA, in connection with the advertising, offering, sale, distribution, or other promotion of cleaning supplies and other merchandise;

(2) Award such permanent, preliminary, and temporary relief as the Court finds necessary to redress injury to Defendants' businesses resulting from Defendants' violations of the Telemarketing Rule, Section 5(a) of the FTC Act, and N.J.S.A. 56:8-2 of the CFA, including but not limited to redress, rescission of contracts or refund of money, a freeze of Defendants' assets, and appointment of a receiver over all corporate Defendants; and


(3) Award Plaintiffs the costs of bringing this action and any other equitable relief the Court may deem just and proper.

Respectfully submitted,

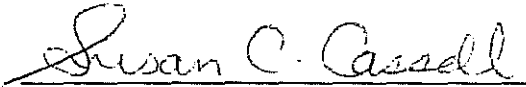
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VERIFICATION

I, Joel N. Brewer, an attorney admitted to practice in the States of Pennsylvania and California, and to the United States District Court for the Eastern District of Pennsylvania, certify under penalty of perjury:

1. I am counsel to the Federal Trade Commission and in that capacity I am responsible for representing the Plaintiff FTC in this action.

2. To the extent facts relating to Counts 1-4 are alleged in this Complaint, the facts set forth are true to the best of my knowledge, information and belief.

DATED: August 4, 1996.

Joel N. Brewer  
Attorney for Plaintiff  
Federal Trade Commission

VERIFICATION

I, Cindy K. Miller, an attorney admitted to practice in the State of New Jersey, and to the United States District Court for the District of New Jersey, certify under penalty of perjury:

1. I am a Senior Deputy Attorney General employed by the New Jersey Division of Law and in that capacity I am responsible for representing New Jersey Attorney General Deborah T. Poritz in this action.

2. To the extent facts related to Count V are alleged in this Complaint, the facts set forth are true to the best of my knowledge, information and belief.

DATED: June 26, 1996

DEBORAH T. PORITZ  
ATTORNEY GENERAL OF NEW JERSEY

By: Cindy K. Miller

Cindy K. Miller  
Attorney for Plaintiff  
State of New Jersey